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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff, v. MATIWOS GHEBREHIWOT, Defendant; DELIA METOYER, Objector and Appellant.	B264465 (Los Angeles County Super. Ct. No. TA133184)

APPEAL from an order of the Superior Court of Los Angeles County, Eleanor J. Hunter, Judge. Affirmed.

Fuentes & McNally, Raymond J. Fuentes and Kim E. McNally for Objector and Appellant.

Frederick R. Bennett as Amicus Curiae in support of the Superior Court of Los Angeles County.

This is an appeal from an order imposing monetary sanctions against appellant Delia Metoyer, a deputy public defender, for violation of a court order. Appellant claims she was denied due process with respect to notice and the opportunity to be heard, that the trial judge had no power to act until her motion to disqualify was determined, and that the court abused its discretion in imposing sanctions. We find no error and affirm the order.

FACTUAL AND PROCEDURAL SUMMARY

Appellant, as a Los Angeles County Deputy Public Defender, represented defendant Matiwos Ghebrehiwot in a child molestation case in Los Angeles Superior Court in Compton. (LASC No. TA133184.) On the morning of January 15, 2015, the case was called for trial and appellant answered ready. The matter was sent to Department H, and called for trial at 9:00 a.m. by Judge Eleanor J. Hunter.

The Deputy District Attorney and appellant conferred with Judge Hunter in chambers to discuss various Evidence Code 402 motions, jury selection, and settlement offers. Then they discussed scheduling, with the expectation of selecting the jury that day and starting trial the next day.

According to the court, at this point appellant, "for the very first time throughout this whole, long time we were back here, said she had a doctor's appointment." The court told her she would have to reschedule the appointment because this would be a short trial and counsel had not mentioned the appointment before. The judge saw no sign of mental or physical distress when she insisted that appellant change her appointment. The appellant started "whimpering" and said "she couldn't understand how somebody could be so cruel" or put her position over her physical health; she also said she had three children for whom she had to provide. The court decided it would be best to put everything on the record. Before that occurred, appellant asked the court if she could use the restroom, and the court said yes.

The court recounted later, "That's the last time I saw Ms. Metoyer. She was ordered to court. We had called a jury up. When I went out there, I fully expected to see

her out there. She wasn't there. My court reporter--I'm sorry--my court clerk went ahead and tried to find her, couldn't find her." The court then received a telephone call from appellant's supervisor, Ms. May-Rucker, who asked that appellant be given time off for her scheduled MRI the following morning; the court said it was not opposed, but wanted to talk to appellant about it.

Appellant did not return to the courtroom on January 15, nor was she reachable by telephone. Thomas Tyler, the deputy in charge of the Public Defender's office in Compton, appeared in court before the noon hour to handle the matter. During an in camera conference that afternoon with representatives of the district attorney's office and Mr. Tyler, attended by the supervising and assistant supervising judges, the court expressed its view that appellant abandoned her client, "a hybrid kind of contempt, because it wasn't done in front of me and there might be some justification for it, so I'll give her the opportunity to go ahead and do that." The court described the events of the morning and was about to ask Mr. Tyler to respond when Ms. May-Rucker joined the conference.

Ms. May-Rucker informed the court that, based on what she had seen when appellant came to her office, she had contacted the human resources department, which referred appellant to the county doctor that afternoon. Ms. May-Rucker was taking appellant out of the trial rotation because she did not think she was physically able to provide effective assistance of counsel for that trial. Since that was Ms. May-Rucker's decision, appellant did not abandon her client. Despite this explanation, the court set an order to show cause re contempt for February 17.

At the February 17 hearing, the court indicated the order to show cause would embrace contempt or sanctions pursuant to Code of Civil Procedure section 177.5.[1] Newly retained counsel for appellant was given a continuance to prepare for the hearing. Appellant filed a motion to disqualify Judge Hunter from hearing the contempt

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[1] All statutory references are to the Code of Civil Procedure unless otherwise indicated.

proceeding. She also filed objections to the contempt proceedings based on the court's failure to file an affidavit setting forth the factual basis for the charges or specifying the court order she had allegedly violated.

At the hearing on March 10, 2015, the court stated its intent not to proceed on the contempt, which it found rendered the motion to disqualify moot. With respect to the order to show cause as to sanctions, the court found no reason it could not preside over the hearing on that matter. The motion to disqualify was denied and stricken pursuant to section 170.4, subdivision (b) "as demonstrating on its face no legal grounds for disqualification." The minute order specified the basis for sanctions: "At issue here is the fact that counsel for the parties were ordered to appear for the trial of this matter, and did appear. However, during the proceedings, counsel for defendant, Ms. Metoyer, asked for permission to use the restroom, which permission was granted. However, Ms. Metoyer did not return to court. A jury had been called up to start the trial, but Ms. Metoyer did not return. No satisfactory explanation for the failure to return to the trial of this matter as ordered has been provided, and based upon the state of the record currently, it appears that Ms. Metoyer has violated the order to appear for the trial of this matter without good cause or substantial justification, and has abandoned her client."

On March 19, 2015, Deputy Public Defender Robert F. McBirney appeared on behalf of the defendant in the underlying criminal case, and a disposition was reached. That judgment is now final.

At the hearing on the sanctions order, appellant submitted her own declaration, but presented no other evidence. After considering her declaration and the argument of counsel, the court found appellant had violated a court order to appear for trial without good cause or substantial justification, and had abandoned her client. The court imposed a fine of $1,500 pursuant to section 177.5, and ordered the matter be reported to the State Bar. This is an appeal from the sanctions order.

DISCUSSION

I

An appeal may be taken from a sanction order after entry of final judgment in the main action. (§ 904.1, subd. (b).) Judgment was entered in the underlying criminal case on March 19, 2015. The court's subsequent sanction order is appealable.

II

Appellant claims Judge Hunter should have been disqualified and should not have presided over any proceedings in which the judge acted as a material witness to undisputed evidentiary facts. She also asserts a reasonable person aware of the facts would doubt whether Judge Hunter could be impartial in the contempt and sanction proceedings against appellant.

Appellant argues the trial judge was without the power to act until the motion to disqualify her from presiding at the hearing on imposition of sanctions was referred to and determined by another court. The trial court denied appellant's motion to disqualify on March 11, 2015, pursuant to section 170.4, subdivision (b). That section provides that, if the face of a statement of disqualification discloses no legal grounds, "the trial judge against whom it was filed may order it stricken." That was the finding of the trial judge in this case. As to the merits, "The determination of the question of the disqualification of a judge is not an appealable order and may be reviewed only by a writ of mandate from the appropriate court of appeal sought [within 10 days of notice to the decision and] only by the parties to the proceeding." (§ 170.3, subd. (d).) The Supreme Court has repeatedly held, "the statute means what it says: Code of Civil Procedure section 170.3, subdivision (d) provides the exclusive means for seeking review of a ruling on a challenge to a judge, whether the challenge is for cause or peremptory." (*People v. Panah* (2005) 35 Cal.4th 395, 444.)

Appellant did seek review of this order by petition for writ of mandate (Case No. B262879). The petition was denied by this court on March 30, 2015. Where, as here, writ relief is the only authorized mode of appellate review, our decision "is binding on

the parties, and cannot be revisited on a subsequent appeal." (*Frisk v. Superior Court* (2011) 200 Cal.App.4th 402, 415.) The trial court had jurisdiction to make the rulings challenged in this appeal.

Appellant argues her claim is based on a denial of the due process right to an impartial judge, and thus is reviewable on appeal. The basis for her claim is the same as her opposition to the sanctions order itself--the judge "truly believed" appellant abandoned her client and did not credit her showing of good cause, valid excuse, and substantial justification for not appearing for trial. As we explain below, there is support for the court's conclusion of abandonment and its exercise of discretion. Nothing in the record demonstrates bias or a denial of due process.

III

Under section 177.5, a judicial officer is empowered to impose a reasonable monetary sanction, not to exceed $1,500, "for any violation of a lawful court order by a person, done without good cause or substantial justification." "Person," within the meaning of this statute, includes a party or an attorney for a party. (*Ibid*.) Such sanctions may be imposed on the court's own motion, after notice and an opportunity to be heard. (*Ibid*.)

Appellant claims she received insufficient notice of the lawful order she was alleged to have violated. The court's March 11 minute order set out the conduct for which sanctions might be imposed: "At issue here is the fact that counsel for the parties were ordered to appear for the trial of this matter, and did appear. However, during the proceedings, counsel for defendant, Ms. Metoyer, asked for permission to use the restroom, which permission was granted. However, Ms. Metoyer did not return to court. A jury had been called up to start the trial, but Ms. Metoyer did not return. No satisfactory explanation for the failure to return to the trial of this matter as ordered has been provided, and based upon the state of the record currently, it appears that Ms. Metoyer has violated the order to appear for the trial of this matter without good cause or substantial justification, and has abandoned her client. [¶] Accordingly, the court is

modifying its order to Ms. Metoyer to show cause why sanctions should not be imposed pursuant to Code of Civil Procedure section 177.5 for violation of the order to attend the trial of this matter without good case or substantial justification, or, in the alternative, if it is found that no such violation has occurred, to show cause why the court should not refer this matter to the State Bar of California with regard to the apparent abandonment of her client." There is nothing vague or ambiguous about the court's notice of the order alleged to have been violated.

IV

Appellant asserts she had good cause and substantial justification for not appearing for trial on January 15, 2015, and that the court's sanctions order imposing a $1,500 fine and reporting her to the State Bar constitutes a prejudicial abuse of discretion. The record does not support this claim.

Appellant opposed the imposition of sanctions by written declaration, in which she states she did not raise the issue of her medical appointment in Department D, where she had announced ready for trial, "because the appointment was a scheduling issue, which I felt was better addressed in Department H. On January 15, 2015, when this matter was assigned to Department H, I was prepared to proceed to trial." While she may have been prepared for trial, she was not *ready* for trial if she needed to take the following day off for a medical appointment, particularly in what the court described as a short trial.

When the court was not receptive to her request, appellant states she "stressed the severity of my injury and that my health was of utmost concern, not only for my children but for my client. All of this was explained in a clear, concise manner with no tears. In response, I felt my concerns were mocked by Judge Hunter when she stated, 'Ms. Metoyer are you playing the kid card?' This was hurtful and scary. I was frightened that Judge Hunter was going to prevent me from attending my medical appointment; thereby, compromising my health and my ability to work. It was this fear, an inability to support myself or my family that moved me to tears." None of this justifies what followed.

In the face of appellant's concerns, the court decided the discussion should be put on the record. That is when appellant asked to use the restroom, left, and did not return to the courtroom. In her declaration, appellant explains: "At this time, I was emotionally upset and in tears at the court's response to my request. I felt the court's response compromised my health. . . . My plan was to clean my face and go forward with the trial. Despite my best efforts, I was unable to undo the signs of crying. My face was red and swollen and washing my face could not undo these signs. Furthermore, I was distraught at the prospect of facing a jury in this emotional state. I felt that I had been degraded and subjected to unwarranted abuse by Judge Hunter. My concentration was distracted because of this perceived mistreatment; and, I felt that I was unable to focus on the trial and the task of selecting a jury panel." She explained that while she was in the bathroom, she recognized she was unable to concentrate. "I feared that my concerns may again cause me to cry, while selecting a jury. I was distraught and overwhelmed with these matters. Given all of these concerns, I immediately called my supervisor, Rhonda May-Rucker, on my cell phone." Ms. May-Rucker instructed appellant to report to her office, which she did.

Appellant gives no satisfactory explanation for failing to inform the court of her distress, or failing to return to the courtroom. She states in her declaration that when she asked to use the restroom, "I believed Judge Hunter could see that I was crying. I believed she was allowing me time to clean up and compose myself. I was unaware of any time limits on my efforts to compose myself. I was not ordered to return to court within a specific period of time after being permitted to use the restroom to compose myself." Appellant's claim about "time limits" fails to explain, or even acknowledge her conduct. She did not simply take a long time in the restroom; she left the restroom, failed to return to the courtroom, and failed to notify the court that she was doing so. She had the ability to make a telephone call from the restroom, as shown by her call to her supervisor. She could have called the court and explained her inability to return at that time, but did not do so.

Section 177.5 was enacted at the request of the superior courts of Los Angeles and San Diego Counties to ensure that all parties are present and prepared for court appearances, and to help eliminate unnecessary delays in civil and criminal proceedings. (*Seykora v. Superior Court* (1991) 232 Cal.App.3d 1075, 1080.) Imposition of sanctions is within the discretion of the trial court, to be exercised in a reasonable manner with one of the statutorily authorized purposes in mind. (*Winikow v. Superior Court* (2000) 82 Cal.App.4th 719, 726.)

In this case, the court had called up a jury and was ready to begin trial when appellant disappeared, resulting in delay of the criminal case and a series of hearings to address appellant's disappearance. Appellant's only explanation--that the court had caused her emotional distress by its refusal to grant her request for time off from trial--does not justify her failure to return to the courtroom to represent her client, or her failure to notify the court promptly of her inability to return to the courtroom to begin trial. She presented no medical evidence of her physical or emotional condition. She also declined the opportunity to apologize to the court for her disappearance, even when specifically asked at the hearing if she wished to add anything more to the record, including an apology. The fact that she was subsequently taken off the case does not excuse her conduct while she was still counsel for the defendant and trial was set to begin.

In light of the statutory purpose of section 177.5, to ensure the presence of all parties for trial and eliminate unnecessary delay in the proceedings, we find no abuse of discretion in the court's imposition of sanctions for the unnecessary delay caused by appellant's failure to return to the courtroom for trial on the morning of January 15, 2015.

V

Appellant raises claims with respect to the court's contempt proceeding. Since the court did not pursue a contempt proceeding, these claims are moot.

DISPOSITION

The order is affirmed.

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EPSTEIN, P. J.

We concur:

WILLHITE, J.

COLLINS, J.